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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/648,589      | 08/25/2003  | Ricky W. Purcell     | 1443.054US1         | 4251             |

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. BOX 2938  
MINNEAPOLIS, MN 55402

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| EXAMINER |
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PAPAPIETRO, JACQUELINE M

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| ART UNIT | PAPER NUMBER |
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3739

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 04/19/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/648,589

Applicant(s)

PURCELL ET AL.

Examiner

Jacqueline Papapietro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-9, 11-20, 26-28 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9, 11-20, 26-28 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 11 and 12 are objected to because of the following informalities: Claim 11 depends on claim 10, which has been cancelled. Claims 11 and 12 will be examined as if claim 10 depends on claim 9. However, appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-9 and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Chalek (US 6936018 B2).

Regarding claim 7, Chalek discloses a flexible wrap (10, column 4 line 46) for supporting a portion of a body, the flexible wrap comprising: an elastic band (12, column 4 line 46); and a plurality of fingers (26) extending from an end of said elastic band (see Fig 1), wherein said plurality of fingers are secured to an exposed section of said elastic band when the flexible wrap is attached to the body (column 5 lines 25-26), wherein each of said plurality of fingers is integral with said elastic band (Fig 1, column 5 lines 18-19). It has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

Regarding claim 8, Chalek discloses the flexible wrap of claim 7 further comprising a plurality of fasteners (26) wherein at least some of the fingers includes at least one fastener for securing said plurality of fingers to said exposed section of said elastic band (column 5 lines 25-26).

Regarding claim 9, Chalek discloses the flexible wrap of claim 8 wherein each of the fingers includes at least one fastener (26) for securing said plurality of fingers to said exposed section of said elastic band (column 5 lines 25-26).

Regarding claim 11, Chalek discloses the flexible wrap of claim 9 wherein said plurality of fingers includes at least one finger that extends from said end of said elastic band along a lateral edge of said elastic band and at least one other finger that extends from said end of said elastic band along an opposing lateral edge of said elastic band (see Fig 1).

Regarding claim 12, Chalek discloses the flexible wrap of claim 11 wherein said plurality of fingers includes at least one finger that extends from a midsection of said end on said elastic band (see Fig 1).

Claims 26-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson (US 5538500).

Regarding claim 26, Peterson discloses a method of supporting a portion of a body, the method comprising: attaching one end of an elastic band to skin on the body using an adhesive (28, Fig 1); wrapping the elastic band around the portion of the body (column 3 lines 57-60); and securing a plurality of fingers that project from an opposing

end of the elastic band (16b and 18b) to an exposed section of the elastic band (16a and 18a).

Regarding claim 27, Peterson discloses the method of claim 26 further comprising repositioning at least one of the plurality of fingers to customize pressure applied by the elastic band (column 3 lines 62-65).

Regarding claim 28, Peterson discloses the method of claim 27 wherein repositioning at least one of the plurality of fingers includes disengaging the at least one of the plurality of fingers from the elastic band and then securing the at least one of the plurality of fingers to another part of the elastic band (column 3 lines 60-65).

Regarding claim 31, Peterson discloses the method of claim 26 wherein wrapping an elastic band around the portion of the body more than one time but less than two times (see Fig 4).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson.

Regarding claim 13, Peterson discloses a flexible wrap for supporting a portion of a body, the flexible wrap (10) comprising: an elastic band (14) having a first end and a second end; an adhesive layer mounted on said elastic band (28) to secure said elastic

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band to a body (column 5 lines 1-6 and lines 41-43), wherein said adhesive layer is adapted to be detachably mounted to skin on the body; a plurality of fingers extending from said second end of said elastic band (16b and 18b), wherein said plurality of fingers are integral with said elastic band and secured to an exposed section of said elastic band (16a and 18a) when the flexible wrap is attached to the body (see Figs 4 and 5); and a plurality of fasteners, wherein each finger includes at least one fastener for securing said plurality of fingers to said exposed section of said elastic band (20 and 22). Peterson does not disclose having the adhesive layer near the first end.

However, Peterson teaches modifying the particular configuration depending on the intended use of the flexible wrap (column 3 lines 28-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Peterson by placing the adhesive at an end of the elastic band in order to secure the flexible wrap to the skin at an end of the wrap instead of in the middle, thereby accommodating a body part such as an ankle.

Regarding claim 15, Peterson discloses a flexible wrap (10) for supporting a portion of a body, the flexible wrap comprising: an elastic band (14); a pack (24) that includes a midsection; and a fastener extending along the edges of said pack such that said fastener secures said pack to said elastic band (Fig 1). Peterson does not disclose a fastener along the midsection of the pack, but does teach that the pack need not be secured to the wrap entirely around its circumference (column 4 lines 15-17). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Peterson by placing the adhesive layer so it extends along the

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midsection of the pack in order to reduce the amount of adhesive needed to secure the pack to the elastic band or to reduce the complexity required during the manufacturing of the invention. Furthermore, it would have been an obvious matter of design choice to a person of ordinary skill in the art to place the fastener along the midsection of the pack because Applicant has not disclosed that placing the fastener along the midsection of the pack is critical to the invention. One of ordinary skill in the art would have expected Applicant's invention to perform equally well with either the fastener along the edges (as in the invention disclosed by Peterson) or the fastener along the midsection of the pack.

Regarding claim 16, Peterson teaches the flexible wrap of claim 15, as described above, wherein said fastener is an adhesive (column 4 line 13).

Regarding claim 17, Peterson teaches the flexible wrap of claim 16, as described above, wherein said adhesive is an adhesive layer that extends between opposing edges of said pack on two sides of the pack (column 4 lines 17-18). Peterson does not disclose a single adhesive layer that extends along the midsection of the pack. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Peterson by placing the adhesive layer so it extends along the midsection of the pack in order to reduce the amount of adhesive needed to secure the pack to the elastic band or to reduce the complexity required during the of manufacturing the invention.

Regarding claims 18 and 19, Peterson teaches the flexible wrap of claim 17, as described above, wherein the elastic band includes lateral edges (Fig 1), but does not specifically disclose the flexible wrap wherein the adhesive layer is transverse to said

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lateral edges when the pack is secured to said elastic band or wherein said adhesive layer extends between said lateral edges. However, Peterson teaches that the pack may be secured only on two sides or the four corners (column 4 lines 17-18). Another obvious option would be to secure the pack by placing an adhesive layer so it extends along the midsection of the pack, as described above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Peterson invention so that said adhesive layer is transverse to said lateral edges and said adhesive layer extends between said lateral edges when said pack is secured to said elastic band in order to secure the pack to the elastic band in the best mode when the wrap is attached to the body (Figs 4 and 5) while using an adhesive layer along the midsection of the pack.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson as applied to claim 13 above, and further in view of Daneshvar.

Peterson discloses the flexible wrap of claim 13, as described above, but does not disclose the wrap wherein the elastic band includes a plurality of layers. Daneshvar teaches a flexible wrap with an elastic band with an adhesive layer and a plurality of fasteners to secure the elastic band around the portion of the body, wherein the elastic band includes a plurality of layers (paragraph 0437). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Peterson in view of Daneshvar by making the elastic band out of a plurality of layers in order to provide a stronger elastic band.



Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson as applied to claim 16 above, and further in view of Hymes (PN 6455065 B1) and Podell et al (PN 5620702).

Peterson discloses the flexible wrap of claim 16, as described above, but does not disclose the wrap wherein the adhesive is a hydrogel. Hymes teaches an acne patch (10) attached to the skin with a hydrogel adhesive (14). Podell et al teaches a bandage (10) with a hydrogel adhesive (column 5 lines 2-3). Hydrogel is a standard type of bandage-skin adhesive used in medicine and medical applications. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included hydrogel adhesives in the range of adhesives acceptable for use in the Peterson invention.

### ***Response to Arguments***

Claims 1-6, 10, 21-25, 29, and 30 have been cancelled.

Applicant's arguments filed 31 January 2007 have been fully considered but they are not persuasive.

Applicant's argument regarding claims 7-9 and 11-12 is not found persuasive because it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

Applicant's argument regarding claims 26-28 and 31 is not found persuasive because the claimed method is anticipated by the normal use of the wrap as disclosed by Peterson, as described above.

Applicant's argument regarding claim 13 is not found persuasive. Applicant argues that the adhesive of Peterson "is not on either end of the bandage wrap." The claim states that the adhesive layer is "near said first end." In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the adhesive layer mounted on an end of the wrap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 15-19, Examiner reiterates that Peterson teaches modifying the position and location of the adhesive layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Peterson by placing the adhesive layer so it extends along the midsection of the pack in order to reduce the amount of adhesive needed to secure the pack to the elastic band or to reduce the complexity required during the manufacturing of the invention. Furthermore, it would have been an obvious matter of design choice to a person of ordinary skill in the art to place the fastener along the midsection of the pack because Applicant has not disclosed that placing the fastener along the midsection of the pack is critical to the invention. One of ordinary skill in the art would have expected Applicant's invention to

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perform equally well with either the fastener along the edges (as in the invention disclosed by Peterson) or the fastener along the midsection of the pack.

Applicant should not assume that the Examiner is taking Official Notice. Applicant should specify which elements are missing in the citations, because Examiner believes all elements have been cited.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline Papapietro whose telephone number is (571) 272-1546. The examiner can normally be reached on M-F 9am-5:30pm.

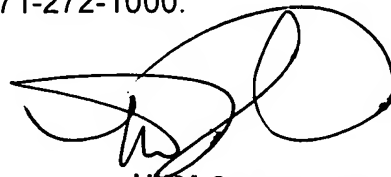
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jacqueline Papapietro  
Art Unit 3739



LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700